

**LOCAL PLANNING AGENCY**  
**MAY 28, 2008**

**1. ROLL CALL**

The meeting was called to order at 7:01 p.m. Board members present were Vice-Chair John Stevens, John Capozzoli, Scott McLaughlin and Mimi Turin. Also present were Councilmember Susan Starkey (arrived at 7:05 p.m.), Attorney Thomas Moss, Planning and Zoning Manager David Quigley, Deputy Planning and Zoning Manager David Abramson, and Board Secretary Janet Gale recording the meeting. Phil Busey was absent.

**2. APPROVAL OF MINUTES:** April 9, 2008

Ms. Turin made a motion, seconded by Mr. McLaughlin, to approve the minutes of April 9, 2008. In a voice vote, with Mr. Busey being absent, all voted in favor. **(Motion carried 4-0)**

**3. SELECTION OF CHAIR**

Vice-Chair John Stevens passed the gavel and nominated Mr. McLaughlin for Chair, seconded by Ms. Turin. There were no other nominations. In a voice vote, with Mr. Busey being absent, all voted in favor.

**4. SELECTION OF VICE-CHAIR**

Ms. Turin nominated Mr. Stevens for Vice-Chair, seconded by Chair McLaughlin. There were no other nominations. In a voice vote, with Mr. Busey being absent, all voted in favor.

**5. PUBLIC HEARING**

*Text Amendment*

- 5.1 AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 12, LAND DEVELOPMENT CODE, ARTICLE III. USE REGULATIONS, DIVISION 1. PERMITTED USES, SECTION 12-32 TABLE OF PERMITTED USES AND DIVISION 3. DETAILED USE REGULATIONS, SECTION 12-34. STANDARDS ENUMERATED; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. (ZB(TXT) 5-1-08)

Ms. Gale read the title and Mr. Abramson summarized the intent of the ordinance. This text amendment would reduce the distance separation requirement of sexually oriented businesses from 1,000 feet to 450 feet from other uses in the Town.

At Chair McLaughlin's request, Mr. Abramson provided historical information regarding Ordinance 2006-12, which was passed in May of 2006 and dealt with sexually oriented businesses. Mr. Abramson distributed a map which indicated various buffers from 250-feet to 2,000-feet around B-3 zoning districts.

Vice-Chair Stevens contended that since the Agency was being asked to consider a buffer reduction to 450-feet, he needed to know how many sexually oriented business sites were located within the 1,000-foot buffer requirement. Mr. Abramson responded that staff could not find any sites that were available at the 1,000-foot buffer. Vice-Chair Stevens asked Mr. Abramson what his definition of "available" meant. Mr. Abramson explained that available would allow someone to come into the Town and apply for a business tax receipt. Not available would require an additional process of rezoning or a variance request to reduce the business separation. Presently, there were no sites available at the 1,000-foot buffer.

Mr. Capozzoli asked why the Town would want to make this change. Mr. Abramson responded that it was based on the advice of legal counsel based on a case in litigation. Although the geographical distance separation would be reduced, Mr. Abramson indicated that there were additional design features which would be required to minimize the impact.

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Ms. Turin asked how many legally operating sexually oriented businesses were located in the Town as she understood there had been one acquired through annexation. Mr. Abramson confirmed that the only legal one he was aware of was the one on State Road 441 as Ms. Turin had understood it had been obtained through annexation.

Vice-Chair Stevens expressed his concern as his home was located directly behind such a business which had not been declared a legally operating business in the Town. He asked Mr. Moss if since there was ongoing litigation involving this issue, was it appropriate to have a confidential attorney/client meeting among the Councilmembers and the Agency members to discuss potential legal ramifications and the litigation regarding this ordinance. Mr. Moss clarified that it was not the Town Attorney's office referenced in the report as it had been "outside counsel" Michael Burke who was the attorney involved. Vice-Chair Stevens felt constrained because having been asked to look at this ordinance at the recommendation of legal counsel on the basis of pending litigation, the Agency should have the benefit of a confidential recommendation from the attorney in order to make a decision regarding it. He asked if there was a way to have staff look into whether or not it would be a violation of the law to have a private attorney/client meeting with Council which included the Agency. Mr. Quigley responded that he did not have that answer today, but he would find out if such a meeting was possible.

Ms. Turin disclosed that she had spoken with Councilmember Starkey and staff about this issue. She explained the reason why she had asked the question earlier regarding how many legal sexually oriented businesses had been established in the Town.

Chair McLaughlin asked if anyone wished to speak for or against this item.

Karen Stenzel-Nowicki recalled being a member of the Agency when Ordinance 2006-12 had been passed by Council. At that time, she had provided extensive research pertaining to this subject. Ms. Stenzel-Nowicki was opposed to the text amendment. She distributed photographs which blatantly depicted Code violations by the business presently in litigation with the Town.

Councilmember Starkey provided historical information regarding the moratorium on sexually oriented businesses as well as Ordinance 2006-12. She felt blind sighted by this proposal and believed that if she found it difficult to obtain backup information, then certainly the public would have not been able to obtain that information. Councilmember Starkey believed that if any changes had to be made to the ordinance, it should be made after the results of the legal challenge.

Gerald Starkey was opposed to the text amendment and asked that the Agency vote "no." He provided information on other cities which maintained 1,000-foot buffers with no problems and believed the Town should keep that standard.

Vice-Chair Stevens disclosed that he had spoken with staff and Councilmember Starkey about this item. Chair McLaughlin disclosed that he had spoken with staff regarding this item. There were no further disclosures.

Vice-Chair Stevens suggested that rather than voting to deny this item and, thereby, moving the item forward, he would prefer to table the item in order to find out if a meeting could be held with legal counsel before making a decision on the issue. Chair McLaughlin agreed that he would not want to make a decision without some kind of legal advice.

Because of the potential impact this issue would have on the Town and all the work that went into establishing an ordinance two years ago, Ms. Turin agreed that she preferred more time for research and information.

Mr. Capozzoli stated that until this case went to trial, he was opposed to amending the ordinance.

Agency members were reluctant to table this item to a "date certain" until they found out if they could meet with an attorney first. Vice-Chair Stevens asked Mr. Quigley to update the Agency on the status of meeting with legal counsel at the next meeting. The item itself was left in abeyance.

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Vice-Chair Stevens made a motion, seconded by Ms. Turin, to table the item until after staff provided a status update at the June 11th meeting regarding whether or not the Agency would be able to speak with legal counsel. In a roll call vote, the vote was as follows: Chair McLaughlin – yes; Vice-Chair Steven – yes; Mr. Busey – yes; Mr. Capozzoli – yes; Ms. Turin – yes. **(Motion carried 5-0)**

Chair McLaughlin asked Mr. Abramson to find out if he could meet with legal staff, one-on-one if not with the Agency, to ask a few questions about “the rights.” Mr. Abramson indicated that he would find out if that was possible.

**6. OLD BUSINESS**

There was no old business discussed.

**7. NEW BUSINESS**

Vice-Chair Stevens welcomed Chair McLaughlin back on the Board and welcomed Mr. Capozzoli to the Board/Agency.

**8. COMMENTS AND/OR SUGGESTIONS**

Chair McLaughlin welcomed Mr. Capozzoli to the Board. He expressed his appreciation to Mike Bender for the many years of service he had provided to the Board. Chair McLaughlin did not entirely agree with a few of Mr. Bender’s parting comments and, therefore, expressed his difference of opinion regarding how appointments were selected as well as the representation of District 4.

**9. ADJOURNMENT**

There being no further business and no objections, the meeting was adjourned at 7:41 p.m.

Date Approved: \_\_\_\_\_

\_\_\_\_\_  
Chair/Agency Member